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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-415

13 **TROY D. SCOTT,**
14 **a.k.a. TROY DAN SCOTT**
15 **12765 Rojo Ct.**
16 **Atascadero, CA 93422**
17 **Registered Nurse License No. 550913**
18 **Public Health Nurse Certificate No. 63152**

ACCUSATION

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
23 Department of Consumer Affairs.

24 2. On or about January 7, 1999, the Board issued Registered Nurse License Number
25 550913 to Troy D. Scott, also known as Troy Dan Scott ("Respondent"). Respondent's registered
26 nurse license was in full force and effect at all times relevant to the charges brought herein and
27 will expire on September 30, 2010, unless renewed.

28 3. On or about January 3, 2001, the Board issued Public Health Nurse Certificate
Number 63152 to Respondent. Respondent's public health nurse certificate was in full force and

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1 effect at all times relevant to the charges brought herein and will expire on September 30, 2010,
2 unless renewed.

3 STATUTORY PROVISIONS

4 4. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
5 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
6 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
7 Practice Act.

8 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
9 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
10 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
11 (b), the Board may renew an expired license at any time within eight years after the expiration.

12 6. Code section 2761 states, in pertinent part:

13 The board may take disciplinary action against a certified or licensed
14 nurse or deny an application for a certificate or license for any of the following:

15 (a) Unprofessional conduct . . .

16

17 (f) Conviction of a felony or of any offense substantially related to the
18 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof . . .

19 7. Code section 2762 states, in pertinent part:

20 In addition to other acts constituting unprofessional conduct within the
21 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
person licensed under this chapter to do any of the following:

22 (a) Obtain or possess in violation of law, or prescribe, or except as
23 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
24 defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

25 (b) Use any controlled substance as defined in Division 10 (commencing
26 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
27 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety to
28 the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof . . .

8. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

9. Code section 490, subdivision (a), states:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a -----," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

12. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . ."

COST RECOVERY

14. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE AND DANGEROUS DRUGS AT ISSUE

15. "Demerol", a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17).

16. "Nubain", a brand of nalbuphine hydrochloride, is a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.

17. "Phenergan", a brand of promethazine hydrochloride, is a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

18. Respondent is subject to disciplinary action pursuant to Code sections 2761, subdivision (f), and 490, subdivision (a), in that on or about January 17, 2007, pursuant to General Court-Martial Order No. 3-06 in the court-martial convened by the Commanding Officer, Naval Air Station, Lemoore, California, titled *U.S. v. Troy D. Scott, Lieutenant (O-3), Nurse Corps, U.S. Navy*, NMCCA No. 2007-00112, Respondent pled guilty to violating Articles 112, subdivision (a) (wrongful use and possession of a controlled substance), 121 (theft of property of the U.S. Government), and 133 (conduct unbecoming an officer), of the Uniform Code of

1 Military Justice, crimes substantially related to the qualifications, functions, and duties of a
2 registered nurse. On or about September 13, 2006, Respondent was sentenced to 7 months
3 confinement at the Naval Consolidated Brig, Miramar, California, and dismissed from the United
4 States Navy. The circumstances of the crimes are as follows:

5 a. On and between June 1, 2005, and December 4, 2005, while assigned to work as a
6 registered nurse at Naval Hospital Lemoore, Respondent used the controlled substance Demerol,
7 which he stole or obtained from the hospital PYXIS machine himself and had others obtain for
8 him under false pretenses, as more particularly set forth in subparagraph 19 (a) below.

9 b. On and between June 1, 2005, and December 31, 2005, Respondent stole
10 approximately 20 vials of Nubain, property of the U.S. Government.

11 c. On and between June 1, 2006, and December 31, 2006, Respondent stole
12 approximately 20 vials of Phenergan and 300 syringes, property of the U.S. Government.

13 d. On and between August 1, 2004, and October 31, 2005, Respondent wrongfully
14 distributed Phenergan to K. S.

15 SECOND CAUSE FOR DISCIPLINE

16 (Diversion, Possession, and Self-Administration of a Controlled 17 Substance and Furnishing of a Dangerous Drug)

18 19. Respondent is subject to disciplinary action pursuant to Code section 2761,
19 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
20 subdivision (a), in that while assigned to work as a registered nurse at Naval Hospital Lemoore,
21 Respondent did the following:

22 **Diversion of Controlled Substances:**

23 a. In and between June 2005, and December 2005, Respondent obtained the controlled
24 substance Demerol by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and
25 Safety Code section 11173, subdivision (a), as follows: In or about June or July 2005,
26 Respondent took a partial dose of Demerol that had not been properly wasted and self-
27 administered the medication (the Demerol was for one of the general surgery patients).
28 Respondent continued taking and using un-wasted Demerol from the general surgery patients

1 until September 2005, when he began taking Demerol directly from the PYXIS machines. At
2 most, Respondent would take 75 mg of Demerol at one time; however, the doses were typically
3 around 35 to 50 mg. Respondent would inject the Demerol into his right hand, arm, or hip.
4 Respondent had access to the Mother Infant Unit and Medical Surgical Unit (MIU/MSU) PYXIS
5 and the Operating Room (OR)/anesthesia PYXIS machines and took Demerol for his own
6 personal use from both machines. Respondent increased the amount of Demerol he was taking
7 from 35 mg to 75 mg. Respondent occasionally asked his nurse in the surgical clinic, D. L., and
8 Lt. F. in MSU to retrieve Demerol from the PYXIS machines. D. L. and Lt. F. believed that
9 Respondent was asking them to retrieve Demerol for Respondent's patients, but oftentimes
10 Respondent would use the left over Demerol for himself. When Respondent took Demerol out of
11 the PYXIS machine for his own personal use, he would charge the medication to a patient who
12 was still in the hospital or a patient who had been recently discharged. Respondent eventually
13 began taking about 150 mg of Demerol out of the PYXIS machines in the MSU and OR
14 approximately every other day, twice a day. After using the Demerol, Respondent would bring
15 the old syringes back to the office and dispose of them in the Sharps container. Respondent also
16 took Demerol from the PYXIS machine for self-use on December 4, 2005, and December 5,
17 2005. On December 5, 2005, Respondent signed a permissive authorization for search and
18 seizure of his bodily fluids (urine). Respondent's urine was tested and found to be positive for
19 meperidine (Demerol).

20 **Possession of Controlled Substances:**

21 b. In and between June 2005, and December 2005, Respondent possessed various
22 quantities of the controlled substance Demerol without a valid prescription from a physician,
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section
24 4060.

25 **Self-Administration of Controlled Substances:**

26 c. In and between June 2005, and December 2005, Respondent self-administered
27 various quantities of the controlled substance Demerol without lawful authority therefor, as set
28 forth in subparagraph (a) above.

1 **Furnishing of Dangerous Drugs:**

2 d. On and between August 1, 2004, and October 31, 2005, Respondent distributed or
3 furnished the dangerous drug Phenergan to K. S.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Use of Controlled Substances to an Extent or in a Manner**

6 **Dangerous or Injurious to Oneself and/or Others)**

7 20. Respondent is subject to disciplinary action pursuant to Code section 2761,
8 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
9 subdivision (b), in that in and between June 2005, and December 2005, while assigned to work as
10 a registered nurse at Naval Hospital Lemoore, Respondent used the controlled substance Demerol
11 to an extent or in a manner dangerous or injurious to himself and/others, as set forth in
12 subparagraph 19 (a) above.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Conviction of a Crime Involving the Self-Administration**

15 **and Possession of a Controlled Substance)**

16 21. Respondent is subject to disciplinary action pursuant to Code section 2761,
17 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
18 subdivision (c), in that on or about January 17, 2007, Respondent was convicted of a criminal
19 offense involving the self administration and possession of the controlled substance Demerol, as
20 set forth in paragraph 18 above.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 550913, issued to Troy D.
25 Scott, also known as Troy Dan Scott;

26 2. Revoking or suspending Public Health Nurse Certificate Number 63152; issued to
27 Troy D. Scott, also known as Troy Dan Scott;

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1 3. Ordering Troy D. Scott, also known as Troy Dan Scott, to pay the Board of
2 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.

5
6 DATED: _____

3/8/10

for



LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant